

UNITED STATES OF AMERICA

v.

AHMED KHALFAN GHAILANI a.k.a.,
“FUPI,” “HAYTHAM,” “ABUBAKAR
KHALFAN AHMED,” and “SHARIF OMAR”

GOVERNMENT MOTION

**MOTION FOR 120 DAY
CONTINUANCE IN THE INTERESTS
OF JUSTICE**

23 January 2009

1. Timeliness: This motion is filed in accordance with the timelines specified by R.M.C. 905(b)(4) and the Military Commissions Trial Judiciary Rules of Court issued on 2 November 2007.

2. Relief Requested: In the interests of justice, and at the direction of the President of the United States and the Secretary of Defense, the Government respectfully requests that the Military Commission grant a continuance of the proceedings in the above-captioned case until May 22, 2009.¹ The Government requests that this continuance halt all proceedings in this matter, including but not limited to all pending motions and responses, future motions and responses, disclosure of discovery and due dates, as set forth in the military judge’s “Schedule for Trial” dated 26 November 2008.

3. Overview: In order to provide the President and his Administration time to review the military commissions process generally, and the cases pending before military commissions specifically, the Secretary of Defense has, by order of the President, directed the Chief Prosecutor to seek continuances of 120 days in all pending cases.

4. Burden and Persuasion: As the moving party, the Government bears the burden of persuasion. *See* R.M.C. 905(c)(2).

5. Facts:

a. On 20 January 2009, President Barack Obama took office as President of the United States. As such, President Obama is the Commander-in-Chief of the United States Armed Forces. The Honorable Robert Gates continues to serve as the Secretary of Defense.

¹ The Government will be requesting a continuance until 22 May 2009 in all pending military commissions cases.

b. On 22 January 2009, President Obama issued an Executive Order entitled: REVIEW AND DISPOSITION OF INDIVIDUALS DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF DETENTION FACILITIES. (Attachment A.) This Executive Order ordered an inter-agency Review of “the status of each individual currently detained at Guantanamo” and directed the Secretary of Defense to “ensure that during the pendency of the Review ... no charges are sworn or referred to a military commission ... and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered ... are halted.”

c. By order of the President, the Secretary of Defense directed the Chief Prosecutor of the Office of Military Commissions to seek continuances of 120 days in any case that had been referred to military commission, in order to provide the Administration sufficient time to conduct a review of detainees currently held at Guantanamo Bay, Cuba. (Attachment B).

6. Argument:

a. Rule for Military Commission 707(b)(4)(E)(i) authorizes the military judge of a military commission to grant a continuance or other departure of the proceedings if the interests of justice served by taking such action outweigh the best interests of both the public and the accused in a prompt trial of the accused.

b. The requested continuance is in the interests of justice, since it will permit the President and his Administration to undertake a thorough review of all pending cases and the military commissions process.

c. The interests of justice served by granting the requested continuance outweigh the interests of both the public and the accused in a prompt trial. Granting a continuance of the proceedings is in the interests of the accused and the public, since the Administration’s review of the commissions process and its pending cases could result in changes that would (1) render moot any proceedings conducted during the review, (2) necessitate re-litigation of issues, or (3) produce legal consequences affecting the options available to the Administration following its review. Further, changes in the military commissions procedures that could result from a review of the commissions process might inure to the benefit of the accused.

d. The Government requests a halt to this military commission and a temporary stay of all orders previously issued. During this continuance the requirements of previously ruled upon motions should be stayed, compliance dates readjusted appropriately, and all other proceedings halted to comport with the President’s intent and this commission’s ruling. This includes the military judge’s “Schedule for Trial” dated 26 November 2008.

7. Conclusion: For the foregoing reasons, the military commission should grant a continuance in this matter and halt all further proceedings until 22 May 2009, and adopt the attached Findings of Fact, Conclusions of Law and Order (Attachment C).

8. Oral Argument: The Government does not request oral argument, but is prepared to argue should the commission find it helpful.

9. Witnesses and Evidence: No witnesses or evidence are necessary to decide this motion.

10. Certificate of Conference: The Government has conferred with the defense and the defense expressed a desire for the opportunity to respond to the Government's motion.

11. Attachments:

A. Executive Order entitled: REVIEW AND DISPOSITION OF INDIVIDUALS
DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF
DETENTION FACILITIES

B. Secretary of Defense Order

C. Proposed Findings of Fact and Conclusions of Law.

12. Submitted by:

\\signed\\
Felice John Viti
Prosecutor

\\signed\\
Jeffrey B. Jones
Prosecutor